

FEITLIN, YOUNGMAN, KARAS
& GERSON, LLC
Jonathan M. Ettman, Esq.
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✉ JEttman@fykglaw.com
Attorneys for plaintiff, Express Freight Systems Inc.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

EXPRESS FREIGHT SYSTEMS INC., <i>Plaintiff,</i> v. YMB ENTERPRISES INC., <i>Defendant(s).</i>

Civil Action No.: 1:20-cv-00186-ARR-LB

Civil Action

**REPLY CERTIFICATION OF
JONATHAN M. ETTMAN, ESQ. IN
SUPPORT OF PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

I, JONATHAN M. ETTMAN, ESQ., of full age, do hereby certify and say:

1. I am an attorney duly admitted to practice law in the State of New York and am litigation counsel with the firm Feitlin, Youngman, Karas & Gerson, LLC, attorneys for plaintiff Express Freight Systems, Inc. ("Plaintiff"). I am responsible for litigating the above-captioned action on Plaintiff's behalf and have personal knowledge of the facts set forth herein.

2. I make this Reply Certification in response to defendant YMB Enterprises, Inc.'s opposition to Plaintiff's motion for partial summary judgment, and in further support of Plaintiff's motion.

3. Defendant's opposition to Plaintiff's motion for partial summary judgment relies on purported facts set forth by Defendant's representative, Volve Mendlovic. However, the

Affidavit of Volvie Mendlovic annexed as Exhibit A to Defendant's counsel's Affirmation opposing the motion is unsigned. Thus, the entire Affidavit should not be considered.

4. Annexed hereto as **Exhibit A** is a copy of the email from Defendant's counsel to Plaintiff's counsel dated June 1, 2021 and June 2, 2021, together with Plaintiff's counsel's responsive email dated June 2, 2021. Defendant's counsel's June 1 email represents the first time Defendant's counsel asked the undersigned to provide him with a courtesy copy of the transcript of Volvie Mendlovic's deposition. As can be seen by the undersigned's June 2 email, Defendant's counsel was advised to contact the court reporter and purchase his own copy, as no rule or law requires that the undersigned supply a courtesy copy.

5. Annexed hereto as **Exhibit B** is a copy of Defendant's counsel's email to Plaintiff's counsel dated July 29, 2021, in which Defendant's counsel claims that Defendant's opposition to the summary judgment motion would be served on July 30, 2021 and that his office has tried, unsuccessfully, to obtain the deposition transcript from the court reporter. Defendant's counsel even goes as far as claiming that the court reporter advised that the undersigned's consent was required in order to release a copy of the transcript to Defendant's counsel.

6. This representation by Defendant's counsel appears to be spurious at best given the statements made by the court reporter set forth in his July 30 and August 6, 2021 emails, copies of which are annexed hereto as **Exhibit C**. In his July 30 email, the court reporter states that there are no notations in the files reflecting any attempt by Defendant's counsel's office to obtain the transcript. The reporter further states, correctly, that all parties in a District Court case have to purchase their own copies of the transcript, and that the undersigned's consent is not required for Defendant's counsel to obtain his own copy. He also indicates that Defendant's counsel is free to contact him to purchase a copy. In his August 6 email, the court reporter

indicates that neither Mendlovic nor Defendant's counsel ordered a copy of the transcript during the deposition.

7. Annexed hereto as **Exhibit D** is the undersigned's email to Defendant's counsel dated July 30, 2021, expressing disbelief as to Defendant's counsel's explanation for being unable to obtain the transcript, and reminding counsel that all he has to do is contact the court reporter and purchase a copy if he wants the transcript.

8. Annexed hereto as **Exhibit E** is Defendant's counsel's letter to the undersigned dated July 30, 2021, which Defendant's counsel filed with the Court on August 2, 2021, apparently to demonstrate to the Court that Defendant's counsel served opposition papers to the within motion by mailing same, via USPS, on July 30, 2021. It is worth noting that although Defendant's counsel eventually hand delivered the opposition papers on Monday, August 2, 2021, the opposition papers that were supposedly mailed on July 30th, have yet to be received by the undersigned, one week after Defendant's counsel supposedly mailed them. Unless the papers were "lost in the mail", it appears that Defendant's counsel has mislead the Court.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

s/ Jonathan M. Ettman
Jonathan M. Ettman, Esq.

Dated: August 6, 2021

EXHIBIT A

Jonathan M. Ettman, Esq.

From: Jonathan M. Ettman, Esq.
Sent: Wednesday, June 2, 2021 3:05 PM
To: Levi Huebner Esq
Subject: RE: Express Freight v. YMB Enterprises Inc. et al, - Case No: 2:19-cv-12001-SDW-LDW

Levi:

To be clear, you did not request that I supply you with a copy of the transcript and marked exhibits during the deposition or at any time during the past 5 months. Furthermore, I am unaware of any obligation imposed on me under the FRCP to supply you with a copy of the transcript and marked exhibits. If I am wrong, please cite to me the rule. Of course you are free to reach out to the reporter and obtain whatever you want at your cost.

Regards,

Jonathan M. Ettman, Esq.
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Email: jettman@fykgllaw.com

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From: Levi Huebner Esq <newyorklawyer@msn.com>
Sent: Wednesday, June 2, 2021 12:34 PM
To: Jonathan M. Ettman, Esq. <jettman@fykgllaw.com>
Subject: Express Freight v. YMB Enterprises Inc. et al, - Case No: 2:19-cv-12001-SDW-LDW

Dear Mr. Ettman:

Please be reminded that pursuant to FRCP on January 18, 2021, regarding the deposition of Defendant's witness, the undersigned on behalf of the Defendant YMB, demanded a copy of the transcript and marked copies of the exhibits.

To date, your office never furnished the transcript from the deposition, nor did your office furnish the marked exhibits.

Kindly furnish the deposition transcript and the marked exhibits forthwith.

Thank you for your consideration in this matter. Please feel free to contact the undersigned with any questions.

Very truly yours,
Levi Huebner

Levi Huebner & Associates, PC
Attorneys and Counselors at Law

488 Empire Boulevard, Suite 100
Brooklyn, NY 11225
Tel: (212) 354-5555
Fax: (718) 636-4444

EMAIL: NEWYORKLAWYER@MSN.COM

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From: Levi Huebner Esq
Sent: Tuesday, June 1, 2021 6:11 PM
To: Jonathan M. Ettman, Esq. <jettman@fykglaw.com>
Subject: Express Freight v. YMB Enterprises Inc. et al, - Case No: 2:19-cv-12001-SDW-LDW

Dear Mr. Ettman:

Your office never furnished the transcript from Defendant's deposition.

Kindly furnish the deposition transcript forthwith.

Thank you for your consideration in this matter. Please feel free to contact the undersigned with any questions.

Very truly yours,
Levi Huebner

Levi Huebner & Associates, PC

Attorneys and Counselors at Law

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EXHIBIT B

Jonathan M. Ettman, Esq.

From: Levi Huebner Esq <newyorklawyer@msn.com>
Sent: Thursday, July 29, 2021 7:46 PM
To: Jonathan M. Ettman, Esq.
Subject: Express Freight v. YMB Enterprises Inc. et al, - Case No: 2:19-cv-12001-SDW-LDW

Dear Mr. Ettman:

The opposition to Plaintiff's motion for Summary Judgment will be served tomorrow July 30, 2021.

Defendant has suffered setbacks previously described (my paralegal has been out due to his father's surgery requiring an amputation and my associate had to take permanent leave due to health issues). As such, Defendant is requesting a one-week extension to serve opposition to Plaintiff's sanctions motion. Please be reminded that Plaintiff suffers no prejudice, because the sanctions motion would not be applicable until after Plaintiff would receive a favorable decision on its motion for SMJ. Will you consent to a one-week extension from July 30, 2021 to August 6, 2021 for Defendant to respond to Plaintiff's motions for sanctions?

Moreover, several times leaving messages, and on July 21, 2021 my staff contacted the court reporter hired by Plaintiff, who refused to furnish a copy of the deposition transcript of Mendlovic, saying they could not without Plaintiff's permission, and the court reporter said they will get back after speaking with Plaintiff. Unfortunately, the court reporter has not furnished the transcript or gotten back to my staff. You may want to relieve the issue by furnishing as copy of the transcript to the undersigned. Regardless, without the transcript, Defendant is prejudiced in responding properly to the motion for sanctions.

Thank you for your consideration in this matter. Please feel free to contact the undersigned with any questions.

Very truly yours,
Levi Huebner

Levi Huebner & Associates, PC
Attorneys and Counselors at Law

488 Empire Boulevard, Suite 100
Brooklyn, NY 11225
Tel: (212) 354-5555
Fax: (718) 636-4444

EMAIL: NEWYORKLAWYER@MSN.COM

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transmission in error, please notify us by telephone immediately, so that we can arrange for the return of the original documents to us at our cost.

EXHIBIT C

Jonathan M. Ettman, Esq.

From: Avi Azoulay <cs-nj@veritext.com>
Sent: Friday, July 30, 2021 9:54 AM
To: Jonathan M. Ettman, Esq.
Subject: Job 4393980 - Deposition of VOLVIE MENDLOVIC - 1/18/2021

Good morning Jonathan

As per our conversation, I do not see any notation in our files that defendant attorney (LEVI HUEBNER, ESQ) office has contacted Veritext for a copy of this transcripts.

You are aware that this is a District Court case and all parties have to purchase their own copy, and no courtesy copy is being furnished.

In addition, defendant attorney does not need your approval in order to purchase a copy of this transcripts. He has the right to do so.

Please advise attorney LEVI HUEBNER, ESQ that he can contact me directly in order to purchase a copy of this transcripts and I will process his order today.

Should there be anything else, please let me know

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Thank you for your business

Avi Azoulay

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Suite 300 | Mineola, NY 11501

P 516.608.2400 | F 516.706.6487

cs-ny@veritext.com

www.veritext.com



Jonathan M. Ettman, Esq.

From: Avi Azoulay <cs-nj@veritext.com>
Sent: Friday, August 6, 2021 11:59 AM
To: Jonathan M. Ettman, Esq.
Subject: Re: Job 4393980 - Deposition of VOLVIE MENDLOVIC - 1/18/2021

Based on the reporter report - no copy was order by opposing counsel or the witness

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Thank you for your business

Avi Azoulay

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cs-ny@veritext.com

www.veritext.com



EXHIBIT D

Jonathan M. Ettman, Esq.

From: Jonathan M. Ettman, Esq.
Sent: Friday, July 30, 2021 12:19 PM
To: Levi Huebner Esq
Subject: FW: Job 4393980 - Deposition of VOLVIE MENDLOVIC - 1/18/2021

Levi:

With regard to your email last night, I am not authorized by my client to agree to any further delays to this case. Frankly, you have been given more than enough time to respond to the motions. We all have issues in our lives that interfere with work, and I have given you courtesies in the past, but you seem to run into personal problems and ask for adjournments every single time a deadline approaches. Furthermore, you have Lawrence Katz, Esq. at your disposal, as he has appeared in this case already on behalf of YMB.

As far as your difficulties in obtaining a transcript, I find your explanation to be unbelievable. See the email below from the court reporter. Nothing has or is stopping you from purchasing your own copy of the transcript. I am under no obligation to supply a courtesy copy to you. This is a federal court matter. We are each responsible for obtaining our own copies of the transcript. All you had to do was order one. My consent is not required. Why would it be? You are a party to this and have every right to obtain a copy from the court reporter.

Jonathan M. Ettman, Esq.
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Heritage Plaza II
65 Harristown Road, Suite 207
Glen Rock, NJ 07452
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From: Avi Azoulay <cs-nj@veritext.com>
Sent: Friday, July 30, 2021 9:54 AM
To: Jonathan M. Ettman, Esq. <jettman@fykglaw.com>
Subject: Job 4393980 - Deposition of VOLVIE MENDLOVIC - 1/18/2021

Good morning Jonathan

As per our conversation, I do not see any notation in our files that defendant attorney (LEVI HUEBNER, ESQ) office has contacted Veritext for a copy of this transcripts.

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In addition, defendant attorney does not need your approval in order to purchase a copy of this transcripts. He has the right to do so.

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Should there be anything else, please let me know

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Thank you for your business

Avi Azoulay

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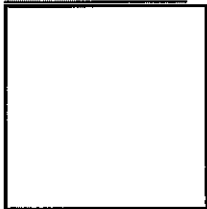


EXHIBIT E

LEVI HUEBNER & ASSOCIATES, PC
ATTORNEYS AND COUNSELORS AT LAW

488 EMPIRE BOULEVARD, SUITE 100
BROOKLYN, NY 11225
TEL: (212) 354-5555
FAX: (718) 636-4444

EMAIL: NEWYORKLAWYER@MSN.COM

July 30, 2021

Via USPS To:

Feitlin, Youngman, Karas & Gerson, LLC
Jonathan Ettman, Esq.
65 Harristown Road, Suite 207
Glen Rock NJ 07452-3317

Re: Express Freight Systems, Inc. v. YMB., Case No. 20-cv-00186 (ARR)(LB)

Dear Mr. Ettman:

As you know this firm represents Defendant, YMB Enterprise Inc.

Enclosed, please find, Defendant's opposition to Plaintiff's motion for summary judgment.

Affirmation by Levi Huebner, dated July 30, 2021 together with the following exhibits:

Exhibit A: affidavit of Volvie Mendlovic ("Volvie"), a 30(b)(6) witness for YMB Enterprises Inc.

Exhibit B: a true copy of dispatches and bill of ladings demonstrating that YMB and Furmano Foods have conducted business with Furmano before July 26, 2018.

Exhibit C: a true copy of invoices that YMB issued to Suntec Furmano Foods have conducted business with Furmano before July 26, 2018.

Exhibit D: a true copy of the certification by Chip Stuckey produced by plaintiff.

Exhibit E: a true copy of the MOTOR CARRIER TRANSPORTATION CONTRACT executed between EXPRESS FREIGHT SYSTEMS INC and YMB ENTERPRISES INC. dated July 26, 2018; and

Exhibit F: Expert Report by HFM Valuation and Consulting Services, Inc., as A Rebuttal to the Economic Loss Report Sustained by Express Freight Systems, Inc as prepared by Kirstin K. Kucsma and Kenneth T. Betz

Page 2

Exhibit G: excerpt of a true copy of the Table of dispatches to Furmano as serviced by Express Freight produced by plaintiff.

Exhibit H: a table comparing the invoices received from plaintiff and attached sub-Exhibit B to Exhibit F with the dispatches listed in Exhibit G.

Exhibit I: bidding opportunity that Express Freight received from Furmano in April 2019.

Exhibit J: bidding opportunity that Express Freight received from Furmano on September 9, 2019, where Furmano complains that they never received the bids from Express Freight.

Exhibit K: October 17, 2019, email from Furmano rejecting offer by plaintiff.

Exhibit L: semi-annual bid that Fumano submitted to Express on June 3, 2020.

Exhibit M: email by Furmano informing plaintiff that they will use their own trucks to do deliveries.

Exhibit N: email by plaintiff claiming that customer "chopped" price.

Exhibit O: dispatch dated October 22, 2018 and invoice dated October 31, 2018 for freight heading to Jin Han Foods at the rate of \$1,250.

Exhibit P: invoice by plaintiff to Furmano dated August 31, 2018 for dispatch to Jin Han Foods at the rate of \$1,250.

Exhibit Q: Economic Loss Report Sustained by Express Freight Systems, Inc as prepared by Kirstin K. Kucsma and Kenneth T. Betz. However, that report only shows speculative damages.

Defendant's Rule 56.1 Statement, and Defendant's memorandum in in opposition to Plaintiff's motion for summary judgment.

Very truly yours,

/ s / Levi Huebner

Attorneys for YMB Enterprise Inc.

LH:sms

Encls.